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IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH, IN AND FOR UTAH COUNTY

PROVO RESERVOIR COMPANY

A CORPORATION--PLAINTIFF

VS.

Provo City, Lincoln School District, The Provo Bench Canal & Irrigation Company, The Lake Bottom Canal Company, The Little Dry Creek Irrigation Company, The Upper East Union Irrigation Company, The Timpanogas Canal Company, the West Union Canal Company, The East River Bottom Water Company, Provo Pressed Brick Company, Utah-Idaho Sugar Company, Zion's Savings Bank & Trust Company, Spring Dell Resort Company, Wildwood Resort Company, South Fork Trout Company, Sego Irrigation Company, Knight Woolen Mills, Provo Ice & Cold Storage Company, Smoot Investment Company, E. J. Ward & Sons Company, Wasatch Irrigation Company, Timpanogas Irrigation Company, Extension Irrigation Company, North Field Irrigation Company (Reorganized), Midway Irrigation Company, Charleston Irrigation Company, Pioneer Irrigation Company, Sage Brush Irrigation Company, Spring Creek Ditch Irrigation Company, Sunrise Irrigation Company, South Kamas Irrigation Company, Washington Irrigation Company, Utah Power and Light Company, First Ward Pasture Company, corporations.

Ruth Hatch and A. C. Hatch, as executors of the last will and testament of Abram Hatch, deceased.

Pauline Schemensky, Stephen Jones, F. T. Carter, Amos Carter, Permelia Young, D. G. Calder, J. E. Smith, Owen A. Baum, Joseph T. Carter, Edith R. Buss, Wilford Penrod, William Gammon, Abram L. Smith, A. L. Penrod, J. M. Buckner, T. J. Smith, W. F. Richins, B. F. Alger, Clara M. Stubbs, J. C. Ivie, Ann Carter, Thomas Thornley, John H. Carter, D. W. Baum, Richard Carter, D. N. Greer, Leo Baum, D. N. Penrod, Leo E. Smith, B. W. Baum, A. L. Tanner, Eliza Carter, as administratrix of the estate of Aaron Carter, deceased; Cora A. Shirts, as administratrix of the estate of Benjamin Shirts, deceased; E. L. Dodder, J. W. Smith and Lettie York, jointly, as members of a voluntary association, not incorporated, under the name and style of the Smith Ditch Company, and also as individual tenants in common in the Smith Ditch and the right to the use of water therein.

James L. Meldrum, John E. Booth, George James, Merrill Holden, Lewis James, Isaiah B. Lott, Benjamin B. Richmond, Joseph Faucett, Walter Lott, Ada J. Hickman, and Elmer Meldrum, jointly as members of a voluntary association, not incorporated, under the name and style of Faucett Field Ditch Company and individually as tenants in common in the Faucett Field Ditch and in the right to the use of waters flowing therein.

Upton Hoover, W. E. Hoover, Webster Hoover and Frank Hoover, as partners, doing business under the name of Excelsior Roller Mills; George Baum, Hetty Young Goodman, L. W. Nuttall, David S. Park, Verinus Carter, Matilda A. Carter, R. G. Carter, John H. Carter, Jr., H. E. Young, Mary Ann Emmons, Levi York, James M. Downs, James M. Bonny, Joseph Williamsen, Evan Williams, Mary E. Davis, Frederick J. Pulham, N. H. Greer, Albert Snyder, Maggie Pearl Brown, Emily E. Forsythe, Alma Brown, Charles H. Davis, J. Joseph Johnson, Marva May Spencer, Louisa J. Brown, Joseph M. Brown, Parley Lewis Jacobson, Alma J. Jorgensen, C. S. Rasmussen, Elizabeth A. Farrer, Ashted Taylor, Olive Smith, E. D. Partridge, Arthur C. Candland, Mattie C. Madsen, David H. Madsen, P. M. Madsen, Caroline H. Madsen, Parley W. Madsen, Wilhelmina Madsen, George H. Madsen, George A. Madsen, Alma J. Madsen, John W. Clark, LeRoy Dixon, George A. Clark, Minnie Hamilton, Robert Kinneer, John E. Nielson, John E. L. Nelson, Elizabeth Perry, John E. Lewis, John Ritchie, James Fisher, Anna T. Nelson, Rachel C. Perre, Daniel H. Halladay, Enoch S. Goddard, Henry W. Goddard, Hannah M. Cook, Hansina N. Jepperson, Rudolph Riard, Ada Young Little, D. B. McBride, Robert Cordner, Samuel Carter, David Carter, Lafayette Carter, R. D. Young, Mary E. Downs, John H. Emmons, William A. York, Esthna Tanner, Arthur Clyde, David Gounley, Isabell West, Hugh L. Syme, Mary A. Brown, Rachel E. Davis, E. V. Vincent, Wilmirth H. Brown, V. L. Bunnell, Lars Jacobson, as administrator of the estate of Lars Jacobson, deceased; James F. Clyde, Albert Jacobson, Sarah Z. Williams, Earl J. Glade as administrator of the estate of James R. Glade, deceased; Robert Birkin, Arthur N. Taylor, Mathias Knudsen, Major Pierce, N. O. Spaulding, B. H. Knudsen, Reed J. Knudsen, Milton H. Knudsen, Andrew Knudsen, Herman Knudsen, W. D. Lewis, Sam E. Bunnell, Lewis Marriott, John D. Dixon, Ellen C. Johnson, George I. Taylor, Mary A. Cook, D. L. Vincent, Dominicus Snow, S. E. Perry, Franklin Spencer, Jr., Mary E. Cox, Walter Cox, Isaac P. Nelson, James E. Fisher, George W. Halladay, Robert Boardman, John J. Massey, J. W. Bates, George T. Peav, Sr., Samuel S. Bailly, Hannah C. Leonard, Edwin S. Hineckley, Charles Conrad, James R. Hooks, John W. Hoover, Daniel Peay, J. A. Spencer, Lucian N. Hineckley, Hyrum Heisel, Charles Giles, Charles Thomas, W. W. Ercanbrack, Alexander Cordner, John H. Gordon, Rose Gordon, John H. Gordon, Jr., James A. Loveless, Jr., Joseph V. Smith, Henry V. Smith, Jr., Henry V. Smith, James C. McClellan, John R. Stubbs, W. W. Ferguson, Peter Bovee, Charles H. Taylor, J. C. Whiting, Wilfred Van Wagenen, Edward V. Vincent, administrator of the estate of Charles Vincent, deceased.

Heber City, Midway Town Corporation and Town of Charleston, acting as a voluntary associa

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Heber City, Midway Town Corporation and Town of Charleston, acting as a voluntary associa-

5.

That the defendants, Provo Bench Canal & Irrigation Company, The Lake Bottom Canal Company, The Little Dry Creek Irrigation Company, The Upper East Union Irrigation Company, The Timpanogos Canal Company, The West Union Canal Company, The East River Bottom Water Company, Provo Pressed Brick Company, Utah-Idaho Sugar Company, Zion's Savings Bank & Trust Company, Sprung Dell Resort Company, Wildwood Resort Company, South Fork Trout Company, Sego Irrigation Company, Knight Woolen Mills, Provo Ice & Cold Storage Company, Smoot Investment Company, E. J. Ward & Sons Company, First Ward Pasture Company, Wasatch Irrigation Company, Timpanogos Irrigation Company, Extension Irrigation Company, North Field Irrigation Company (Reorganized), Midway Irrigation Company, Charleston Irrigation Company, Pioneer Irrigation Company, Sage Brush Irrigation Company, Spring Creek Ditch Irrigation Company, Sunrise Irrigation Company, South Kamas Irrigation Company, and Washington Irrigation Company, are each and all corporations duly organized and existing under the laws of the State of Utah.

6.

That the defendants, Heber City, Midway Town Corporation and the Town of Charleston, are municipal corporations of the State of Utah, in Wasatch County, Utah.

7.

That Abram Hatch died at Heber City, Wasatch County, State of Utah, on the 2nd day of December, A. D. 1911, and that thereafter, Ruth Hatch and A. C. Hatch, were, by order of the Fourth District Court of the State of Utah, in and for Wasatch County, duly appointed as executors of the last will and testament of Abram Hatch, deceased, and they ever since have been and now are the duly appointed, qualified and acting executors of the last will and testament of the said Abram Hatch, deceased.

8.

That the defendants, Pauline Schemensky, Stephen Jones, F. T. Carter, Amos Carter, Permelia Young, D. G. Calder, J. E. Smith, Owen A. Baum, Joseph T. Carter, Edith R. Buss, Wilford Penrod, William Gammon, Abram L. Smith, A. L. Penrod, J. M. Buckner, T. J. Smith, W. F. Richins, B. F. Alger, Clara M. Stubbs, J. C. Ivie, Ann Carter, Thomas Thornley, John H. Carter, D. W. Baum, Richard Carter, D. N. Greer, Leo Baum, D. N. Penrod, Leo E. Smith, B. W. Baum, A. L. Tanner, Eliza Carter, as administratrix of the estate of Aaron Carter, deceased; Cora A. Shirts, as administratrix of the estate of Benjamin Shirts, deceased; E. L. Dodder, J. W. Smith and Lettie York, jointly as members of a voluntary association, not incorporated, under the name and style of the Smith Ditch Company, and also as individual tenants in common in the Smith Ditch and the right to the use of water therein, have voluntarily associated for the purpose of diverting waters of the Provo River to what is known as the Smith Ditch, and have assumed and used the name of the Smith Ditch Company and as plaintiff is informed and believes are tenants in common in the diverting of said water in said ditch and in the right to the use of the water so diverted therein.

9.

That James L. Meldrum, John E. Booth, George James, Merrill Holden, Louis James, Isaiah B. Lott, Benjamin B. Richmond, Joseph Faucett, Walter Lott, Ada J. Hickman, and Elmer Meldrum, jointly as members of a voluntary association, not incorporated, under the name and style of Faucett Field Ditch Company and individually as tenants in common in the Faucett Field Ditch and in the right to the use of waters flowing therein, have voluntarily associated for the purpose of diverting water from the Provo River into the Faucett Field Ditch and have assumed the name of Faucett Field Ditch Company, and as plaintiff is informed and believes, are tenants in common in the said ditch and in the right to the use of the waters so diverted therein.

10.

That Upton Hoover, W. E. Hoover, Webster Hoover and Frank Hoover, are partners, and as such are doing business at Provo City, Utah, under the firm name of Excelsior Roller Mills.

11.

That letters of administration on the Estate of Lars Jacobson, deceased intestate, were, by the District Court of the Fourth Judicial District in and for Utah County, State of Utah, issued to Lars Jacobson, and the said Lars Jacobson now is the duly appointed, qualified, and acting administrator of the Estate of said Lars Jacobson, deceased.

12.

That letters of administration on the Estate of James R. Glade, deceased, intestate, were, by the District Court of the Fourth Judicial District in and for Utah County, State of Utah, issued to Earl J. Glade, and the said Earl J. Glade now is the duly appointed, qualified, and acting administrator of the Estate of said James R. Glade, deceased.

13.

That letters of administration of the Estate of Aaron Carter, deceased, intestate, were, by the

District Court of the Fourth Judicial District, in and for Utah County, State of Utah, issued to Eliza Carter, and the said Eliza Carter now is the duly appointed, qualified, and acting administratrix of the Estate of said Aaron Carter, deceased.

14.

That letters of administration of the Estate of Benjamin Shirts, deceased, intestate, were, by the District Court of the Fourth Judicial District, in and for Utah County, State of Utah, issued to Cora A. Shirts, and the said Cora A. Shirts now is the duly appointed, qualified, and acting administratrix of the Estate of said Benjamin Shirts, deceased.

15.

That letters of administration on the Estate of Charles Vincent, deceased, intestate, were, by the District Court of the Fourth Judicial District, in and for Utah County, State of Utah, duly issued to Edward V. Vincent, and the said Edward V. Vincent now is the duly appointed, qualified, and acting administrator of the Estate of Charles Vincent, deceased.

16.

That letters of administration on the Estate of Thomas White, deceased, intestate, were, by the District Court of the Third Judicial District, in and for Summit County, State of Utah, duly issued to Mary Ann White, and the said Mary Ann White now is the duly appointed, qualified, and acting administratrix of the Estate of Thomas White, deceased.

17.

That letters of administration on the Estate of William L. Lark, deceased, intestate, were, by the District Court of the Fourth Judicial District, in and for Wasatch County, State of Utah, duly issued to Mims Lark, and the said Mims Lark now is the duly appointed, qualified, and acting administrator of the Estate of William L. Lark, deceased.

18.

That letters of administration with the will annexed on the Estate of John Fowers, deceased, were, by the District Court of the Fourth Judicial District, in and for Wasatch County, State of Utah, duly issued to B. F. Fowers and Elizabeth Fowers, and the said B. F. Fowers and Elizabeth Fowers, now are the duly appointed, qualified and acting executors of the Estate of John Fowers, deceased.

19.

That letters of administration on the Estate of Phillip L. Smith, deceased, intestate, were, by the District Court of the Fourth Judicial District, in and for Wasatch County, State of Utah, duly issued to T. De Vere Smith, and the said T. De Vere Smith now is the duly appointed, qualified, and acting administrator of the Estate of said Phillip L. Smith, deceased.

20.

That letters of administration on the Estate of Nathan T. Coleman, deceased, intestate, were, by the District Court of the Fourth Judicial District, in and for Wasatch County, State of Utah, duly issued to Henry T. Coleman, and the said Henry T. Coleman now is the duly appointed, qualified, and acting administrator of the Estate of said Nathan T. Coleman, deceased.

21.

That the defendants, George Daybell, George W. Daybell, Fred Daybell and Robert Daybell are partners doing business under the partnership name of George Daybell & Sons.

22.

That the defendants, Heber City, Midway Town Corporation and the Town of Charleston, have voluntarily associated for the purpose of diverting water from the Provo River for power and light purposes and are doing business under the association name of Heber Light and Power Plant, in Wasatch County, State of Utah.

23.

That approximately one-half of the defendants are residents of Utah County, State of Utah, one-third are residents of Wasatch County, State of Utah, and one-sixth are residents of Summit County, State of Utah.

24.

That the plaintiff and each of the defendants have and claim an interest in, and a right to the use of the water of Provo River; that said Provo River is a natural stream of water having its principal sources in Wasatch County and Summit County, in the State of Utah, and with tributaries having their sources in Utah County, Utah; that the largest and longest of the streams forming the water of said river have their sources in said Wasatch and Summit Counties, and flow through said Counties to said Utah County, where the stream of said river is augmented by the tributaries having their sources in said

Utah County, and that, when not diverted by artificial means, all of the water of said river reaches Utah Lake, in said Utah County, Utah.

25.

That all of the sources of said Provo River are formed by seepage, percolation, melting snows, rains and underground water sources and that during the different seasons of each year, the amount and quantity of water flowing in said river and in each and all of its tributaries, varies so that during the season when the snows are melting, that is in April, May, June and July, the quantity of water flowing therein, is much more than during the remaining months of the year.

26.

That the quantity of water of said river varies during the season of the melting of the snows so as to increase and decrease the flow thereof, such variations in quantity of flow being caused by the varying temperature at divers times during such season.

27.

That in each and every year when the snow-fall in the mountains at the several sources of the said river, is an average amount, and the precipitation on the water-shed of said river is an average precipitation, there is a surplus of water in said river during the high water period in May and June and until on or about the 15th day of July, over and above all completed appropriations therefrom, the amount and quantity of such surplus being unknown to the plaintiff.

28.

That there are more than twenty thousand acres of land situate in Utah and Salt Lake Counties, Utah, and lying under plaintiff's canal system, constructed and to be constructed, which without the use of artificial irrigation are barren and sterile, but with the use of artificial irrigation will produce abundant agricultural and horticultural crops.

29

That the plaintiff has expended more than two hundred thousand dollars in the construction and maintenance of canals, pipelines, flumes, ditches, headgates and reservoirs for the conveyance and conservation of the waters of said Provo River and its tributaries, for the purpose of irrigating said lands lying under its canal system in said Utah and Salt Lake Counties aforesaid.

29 (a)

That the plaintiff has acquired by purchase and is the owner and entitled to the use of the following primary water rights in said Provo River, to-wit:—

The Blue Cliff Canal right, consisting of two second feet of water from six o'clock p. m. to six o'clock a. m. each and every night, and from six o'clock a. m. to six o'clock p. m. each and every Sunday, and also an exclusive ownership, and the right to the use of all of the spring water collecting and flowing in the bed of the Blue Cliff Canal, in Provo Canyon, Utah County, Utah, and likewise all of the water flowing from what is known as the "Pony Steel Springs" situate on the right side of said Provo River in Provo Canyon, near the residence of the defendant Hyrum Heiselt, except such quantity of said waters collecting in the bed of the said Blue Cliff Canal, and said "Pony Steel Springs," as belongs to the defendant Hyrum Heiselt, the exact quantity of which is unknown to the plaintiff.

29 (b)

That the plaintiff has acquired by purchase, and is the owner and entitled to the use of all the following primary water rights in said Provo River, (except as in this paragraph set forth), to-wit:—

The water right decreed to "The William Wright Estate," in civil action No. 718 in the above entitled Court, consisting of 200 minute feet of the waters of said Provo River for 100 hours each and every 14 days; and all the waters of what are known as "Enoch Spring" and the "Little Springs," except one tenth thereof, which said one tenth plaintiff alleges belongs to the defendant, John W. Hoover.

All the waters of Round Valley Creek, not exceeding three and one-half second feet, except sufficient thereof to irrigate two acres of land which belongs to the defendant John C. Whiting.

The plaintiff further alleges: That the plaintiff is entitled to the right to the use of all of said waters, mentioned in this paragraph (except such portion thereof as belongs to said defendants John W. Hoover and John C. Whiting) beginning at a time during each and every year, which shall not in any season be earlier than the time when the plaintiff shall deem it necessary to release for use for irrigation, the waters impounded by the plaintiff in its reservoirs at or near the head-waters of said Provo River, which time shall not in any event be earlier in the season than June 15th, in any year, and in all events the plaintiff is entitled to the use of said waters from and after June 30th, in each and every year.

29 (c)

That during the years 1912 and 1913, the plaintiff has, with the consent of the defendants residing in Utah County, and their water commissioner appointed by this Court, changed the place of diversion of a part of the waters described in paragraph 29 (b) to-wit: two second feet thereof, and com-

mingled the same with the waters of said Provo River, and recaptured and diverted said water at the intake of its canal, situate on the left bank of Provo River, in Utah County, Utah, near the home of the defendant, Hyrum Heiselt, and plaintiff intends to change the point of diversion of all of said waters described in said paragraph 29 (b), and commingle the same with the waters of Provo River, and recapture and divert the same at the intake of its said canal, hereinbefore mentioned; and plaintiff alleges that by so doing, none of the defendants will be injured or damaged thereby.

29 (d)

That the plaintiff has further acquired by purchase, and is the owner and entitled to the use of secondary or "Class B," water right in said Provo River, as follows:—

"The Blue-Cliff Canal Right" consisting of nine hundred and sixty, seventeen-thousand-nine-hundred and sixtieths, of what is known as "Class B" water right as set forth and defined in that certain civil action No. 718 tried in the District Court of the Fourth Judicial District, Utah County, State of Utah, wherein Provo City, et. al., were the plaintiffs and The Telluride Power and Transmission Company, et. al., were the defendants, the same being the flow of said Provo River measured near the mouth of Provo Canyon in excess of 17,517 cubic feet of water per minute.

29 (e)

That the plaintiff and its predecessors in interest, have used continuously for beneficial purposes during the irrigation season of each and every year, for more than twenty-five years, all the waters of said Provo River, said springs and said Round Valley Creek, hereinbefore described, (except the portion thereof belonging to the defendants John W. Hoover, Hyrum Heiselt and John C. Whiting) peaceably, openly, notoriously, uninterruptedly, continuously during the irrigation season of each and every year, and adversely to all of the defendants herein, and to the whole world, under a claim of right, and that as to said water the plaintiff claims the whole thereof for irrigation and other purposes and the right to use the same therefor.

30

That during the year A. D. 1908, the plaintiff's grantors made application to the State Engineer of the State of Utah, for 150 sec. ft. of the natural flow of the waters of said river, for irrigation purposes, to be diverted from said river at plaintiff's head-gate on the left bank of said river at a point S. 48 deg. 52 min. W. 1320 feet from the quarter section corner between sections 5 and 6 of Tp. 6 S., R. 3. E. Salt Lake Meridian, and which said application (No. 1828) was approved by said Engineer on the 30th day of April, A. D. 1910, and that at an expense of many thousand dollars the plaintiff has constructed dams, gates, flumes, tunnels, and pipe lines to convey said water from said point of diversion, to large areas of barren and unproductive agricultural lands situated in Utah and Salt Lake Counties, Utah, and that the plaintiff has entered into agreements with the owners of such lands, whereby, plaintiff has agreed to furnish to such land owners, water from and through its said ditches, flumes and pipe lines, from the water appropriated under said application, (No. 1828 aforesaid) sufficient for the irrigation of said lands, not to exceed one sec. ft. of water for each 70 acres of land to be so irrigated, and that the appropriation under said application will be completed on or about the 1st day of May, A. D. 1920, and that under said application, plaintiff has diverted and caused to be applied to a necessary and beneficial use in the irrigation of the lands aforesaid, more than 100 sec. ft. of the theretofore unappropriated water of the said river. Said application having been made to the State Engineer April 16, 1908.

31.

That in addition to the rights set forth in the preceding paragraphs, the plaintiff with the defendants, Timpanogos Irrigation Company, Wasatch Irrigation Company and Sego Irrigation Company, have, under applications approved by the State Engineer of the State of Utah, constructed at a cost of many thousand dollars, reservoirs at the head waters of the tributaries of said Provo River in Wasatch and Summit Counties, Utah, having a present capacity of 7000 acre feet and that when completed the said reservoirs will have a capacity of 8500 acre feet, all of which is covered by said approved applications; that on plaintiff's part said reservoirs are constructed and being constructed for storing water for the irrigation of the lands of plaintiff, its stockholders and lessees as above mentioned, during the period beginning on or about the 15th day of July in each year and continuing to the end of the irrigation period of each year, the same being the times when said Provo River in its natural flow does not supply a sufficient quantity of water for the irrigation of said lands, in addition to the quantity necessary for the beneficial use of such of the defendants as have a prior right to plaintiff to the use of the natural flow of the water of said river during such low water season.

32.

That by and under applications approved by the State Engineer of the State of Utah, the plaintiff has acquired the right to divert from the Weber River water-shed in Summit County, Utah, annually 12,600 acre feet of water, and in addition thereto, 100 sec. ft. of water, all of which was formerly flowing into said Weber River; and that plaintiff has caused 50 cubic feet per second thereof to flow into and commingle with the waters of said Provo River, and plaintiff claims as against all the defendants here-

in, the ownership and right to the use of said water so commingled as aforesaid, and the right to recapture and divert the same at plaintiff's head-gate aforesaid, into plaintiff's irrigation system and to use said water for its purposes whenever the same is flowing into the said Provo River, and the right to divert all of the water covered by the said applications and commingle the same with the waters of said Provo River and to recapture and use the same upon the lands under its canals in Salt Lake and Utah Counties, Utah.

33.

That by and under approved applications of the State Engineer of the State of Utah, the plaintiff has in its own right constructed reservoir on the tributaries of said Provo River in Wasatch County and Summit County, Utah, and that the said several reservoirs have a present capacity of 2500 acre feet of water, and when completed will have a capacity of 10,457 acre feet of water.

34.

Plaintiff claims the right to store the flood waters of said Provo River in its several reservoirs above mentioned in the amounts above stated, and to release the water so stored by plaintiff at such times and in such quantities as will best serve the interests of plaintiff, its stockholders and lessees, and the right to commingle said water with the natural flow of water of said river, and to recapture the same at its diverting dam hereinabove mentioned, and at other diverting points along the course of said river, whenever said stored water is released and commingled with the waters of said river.

35.

That the defendants severally deny plaintiff's right to the use of the waters of Provo River as above set forth and deny plaintiff's right to divert water from other sources and commingle the same with the waters of Provo River and recapture and use the same as claimed by plaintiff, and deny the plaintiff's right to store the flood waters of the said river and to release and commingle said stored waters with the water of Provo River and to recapture the same and apply it to the use and purposes for which the same is stored by plaintiff as above set forth, and they have at divers times during the past two years, diverted from said river and converted to their own use, water, the right to the use of which belonged to and was and is the property of this plaintiff, and that the defendants threaten in violation of the rights of plaintiff, to continue so to do, and plaintiff alleges that such acts of the defendants or any of them will, if continued, work an injury to plaintiff, its stockholders and lessees by causing the destruction of their growing crops by drought, and that there is no adequate remedy at law whereby the plaintiff, its stockholders and lessees can recover damage thus caused by the defendants; and plaintiff verily believes that the defendants will, unless restrained by an order of this Court, execute said threatened acts and will continue to deprive plaintiff, its stockholders and lessees of the right to the use of their proper pro rata share of the water of said river, to their great and irreparable injury.

36.

Plaintiff further alleges that many of the defendants who have a right prior in point of time of appropriations, to the plaintiff's right to the use of the waters of said river, have been year after year continuously during the irrigation season, claiming to have the right to do so, using the water diverted by them, wastefully and in quantities largely in excess of that necessary or beneficial for the irrigation of their lands, and that such wasteful and unnecessary use is depriving the plaintiff and all who receive water through plaintiff's irrigation system, of their rights to the use of the waters of said river, and that such wasteful and unnecessary use is not only a violation of the rights of plaintiff, its stockholders and lessees, but prevents to a very great extent the bringing under a high state of cultivation of large areas of barren, uncultivated and practically worthless land in Utah and Salt Lake Counties, which said lands would, with irrigation, produce abundantly, hay, grain and fruits, and other agricultural and horticultural crops, thereby retarding and preventing, by reason of such wasteful use of such water, the growth, development and up-building of the State, in violation of all true principles of right and in violation of the public policy of this State.

37.

Plaintiff further alleges that on the 6th day of May, A. D. 1899, in the Fourth Judicial District Court of the State of Utah, in and for the County of Wasatch, in the case of the Wasatch Irrigation Company et. al. vs. Edward Fulton, et. al., a decree was duly made and entered whereby all of the waters of the said Provo River are decreed to and ordered to be distributed to and among the parties named in said decree according to their respective rights as determined by said decree:—

And that on the 7th day of September, A. D. 1905, in the Fourth Judicial District Court of the State of Utah, in and for the County of Utah, in the case of Provo City, et. al. vs. the Telluride Power Transmission Company, et. al., a decree was duly made and entered whereby all of the waters of said Provo River are decreed and ordered distributed to and among the persons therein named according to their respective rights as determined by said decree:—

That neither of said decrees has any relation to the other, but in each it is assumed that the whole of the flow of the water in said river was diverted and appropriated and applied to a necessary

and beneficial use at the date thereof, and that by each of said decrees the whole of the water of said river was covered and awarded to the parties making such appropriation, according to their priorities in point of time of diverting and applying the same to a necessary and beneficial use:—

That since the making of said decrees, by reason of the high or flood waters being stored during the first part of the irrigation season, and the use of waters so stored in reservoirs for irrigation during the low water period, the capacity of the waters of said river for irrigation has been greatly increased and large areas of land have been brought under cultivation, and that by reason of the storage of waters in reservoirs as aforesaid, for use during the low water season as aforesaid, many persons not parties to either of said decrees, have become interested in, and are now owners of the right to the use of some of the waters of said river for irrigation, culinary and domestic purposes:—

That said decrees were made having in view the primary water first and the adjudication of the rights to use thereof among the persons entitled thereto, and by said decrees only a small portion of the flood waters of said river were considered, which said flood waters are now, by reason of being stored in reservoirs and used for irrigation during the low water season practically of as great value as the said primary or low water.

38.

That the present regulations and provisions for the distribution of the waters of said river, to and among those entitled to the use thereof, are wholly inadequate by reason of the users thereof, failing to comply with the statutes of this State in regard to providing suitable gates and measuring devices at or near the intake of their respective ditches and canals, and that in fact the majority of the users of the water from said river have no measuring devices or means provided whereby a measurement can be made of the waters being diverted by them, and that unless the users of said water and those who divert the same from said river are required by a decree of this Court to provide proper gates and devices for the measuring of the water so diverted by them, the division of said waters and the distribution thereof among the several persons entitled thereto, cannot be made according to their respective rights as adjudicated, and the whole matter of measurement and the distribution will be largely based upon a guess by those whose duty it may be to make such distribution, and that it is necessary that each of the parties diverting water from said river be required to provide at the point of diversion at the intake of their several ditches and canals a proper gate and proper flume for the measurement of the water so diverted.

39.

That by reason of there being no regular system for the distribution of the waters of said river and its tributaries to the persons entitled to the use thereof, and by reason of the many county jurisdictions through which said river and its tributaries flow, the various defendants, each and all, interfere with the flow of the water therein, without regard to the rights of others in the use thereof, and in order that the rights of all may be conserved and protected, it is necessary that the Court appoint a competent person, water commissioner, with authority to employ assistants to divide and distribute the water of said river and its tributaries, to and among the persons entitled to the use thereof, and to also provide for the compensation of such commissioner and assistants and the manner of collection and payment of such compensation until such time as the State shall undertake the duty of distributing such water, as now provided, or as hereafter may be provided by law.

Wherefore plaintiff prays judgment:—

1.

That the defendants and each of them may be required to set forth the nature and amount of their respective claims to the waters of said Provo River (including all of its tributaries) and that all adverse claims of the defendants and each of them may be determined by decree of this Court; that by said decree it be adjudged that the plaintiff is entitled to the use of the waters of said river in the several amounts and items and for the purposes set forth in this complaint, and to have said water flow to plaintiff at its points of diversion, as set forth in this complaint, without interruption by the defendants or any or either of them, and that by said decree the right and title of the plaintiff to the said water and the right to the use thereof may be declared to be good and valid as against the defendants and each of them and against any and all persons claiming or to claim, by, through or under them or either of them,—

2.

That by said decree the right and title and interest of the defendants and each of them to the waters of said Provo River and the use thereof may be determined, adjudged, and settled,—

3.

That each of the parties hereto, both plaintiff and defendants, be enjoined and debarred from asserting or claiming any right, title or interest to the use of any of the waters of said river in excess of his rights as adjudged by said decree,—

4.

That by said decree each of the parties hereto, both plaintiff and defendants, be required to con-

struct suitable, permanent dams and gates in said river at the points where they divert water from said river, and suitable gates for regulating the flow of water at the intake of their respective ditches or canals and proper rating flumes at or near to the intake of each diverting ditch or canal, for measuring the amount of water diverted therein, the said dams, gates and measuring flumes or pipes to be constructed before any of said water is diverted into such ditch or canal, the plan of such dams, gates and flumes or pipes to be approved by the water commissioner to be appointed by this Court, and in case of the neglect or failure of such water commissioner to act, then by his successor, to be appointed by the Judge of this Court at Chambers, on his own motion.

5.

That by said decree it may be ordered that this Court appoint a suitable person, a competent engineer water commissioner, to distribute the waters of said Provo River to the several persons, adjudged to be the owners of the rights to the use thereof according to their said adjudicated rights, and that the said person may be empowered to employ assistants, for whose acts he shall be responsible, that said appointee may be required to enter into such bond as may be from time to time determined by this Court, for the faithful discharge of his duties, and that the compensation of said appointee and his assistants and manner of collecting and payment of the same may be determined by said decree, such appointment to be made annually until such time as the water shed of the Provo River shall be created a water district under the laws of the State of Utah.

Plaintiff prays for such other and further relief as may be equitable, and for its costs herein.

A. C. HATCH,
JACOB EVANS,
A. J. EVANS, and
ALFRED L. BOOTH,
Attorneys for Plaintiff.

STATE OF UTAH, }
COUNTY OF UTAH. } ss.

R. J. Murdock, being first duly sworn says, that he is an officer of the plaintiff, Provo Reservoir Company, a corporation, to-wit; the Secretary thereof, and that he is acquainted with the facts set forth in the foregoing complaint, and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated on information and belief, and that as to those matters he verily believes it to be true; and that as such officer he makes this verification for and in behalf of the plaintiff corporation.

R. J. MURDOCK.

Subscribed and sworn to before me this 6th day of February, A. D. 1914.

My commission expires on the 2nd day of September, A. D. 1917.

JACOB EVANS,
Notary Public.

2888

Chas. H. H. H. H. C.
vs. P. H.

Chas. H. H. H. C.
vs. P. H.

Copy of Complaint
for
Sfts in Summit
County - Utah.

